

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

PRIMESTAR CONSTRUCTION CORPORATION

And

Case 28-CA-211009

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 351**

**GENERAL COUNSEL'S STATEMENT IN SUPPORT OF MOTION FOR CERTAIN
ALLEGATIONS TO BE DEEMED ADMITTED OR, IN THE ALTERNATIVE,
MOTION FOR PARTIAL DEFAULT JUDGMENT AND MOTION IN LIMINE**

I. INTRODUCTION

In response to the Notice to Show Cause issued by the National Labor Relations Board (Board) on July 26, 2018, Counsel for the General Counsel (CGC) files this Statement in Support of Motion For Certain Allegations to be Deemed Admitted or in the Alternative, Motion for Partial Default Judgment and Motion in Limine (Motion). By a letter dated July 19, 2018, Respondent addressed the Complaint and Notice of Hearing (Complaint) in this matter, which the Regional Director for Region 28 (Regional Director) issued on June 28, 2018. Under the Board's Rules and Regulations, a respondent is required to file an Answer to a Complaint and Notice of Hearing within 14 days, and that answer must admit, deny, explain, or indicate that the Respondent lacks knowledge as to each specific allegation. Respondent's July 19, 2018 letter failed to adhere to these requirements with respect to a number of allegations.

II. FACTUAL BACKGROUND

The International Union of Operating Engineers, Local 351 filed the charge in Case 28-CA-211009 on about December 4, 2017. Having found merit to that charge, the General

Counsel, by the Regional Director, filed the Complaint on June 28, 2018, alleging in pertinent part that:

1. The charge in Case 28-CA-211009 was filed on December 4, 2017, and a copy was served on Respondent by U.S. mail on December 5, 2017.
2.
 - (a) At all material times Respondent has been a corporation with an office and place of business in El Paso, Texas, and has been engaged as a maintenance contractor in the construction industry doing commercial and office construction and repair for various clients, including the United States Government.
 - (b) In conducting its operations during the 12-month period ending December 4, 2017, Respondent purchased and received at its construction sites located in the State of Texas goods valued in excess of \$50,000 directly from points outside the State of Texas.
 - (c) At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
3. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.
4. At all material times, Felicia James has held the position of President and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

On June 28, 2018, the Complaint was served on Respondent by certified mail, along with enclosures detailing Respondent's obligation to respond to the Complaint by filing an Answer within 14 days from the date of service, which was July 13, 2018, and explaining the Board's Rules and Regulations for filing an Answer. When Respondent failed to respond to the

Complaint by July 13, 2018, CGC sent a letter by certified return receipt and e-mail, notifying Respondent that it had missed the deadline for filing an answer, and informing Respondent that if it did not file an Answer by July 20, 2018, CGC would file a motion for default judgment. CGC also included a copy of the Complaint and all enclosures with the letter, for Respondent's convenience.

On about July 19, 2018 Respondent filed a letter responding to the Complaint. This letter was initially filed through the Agency's e-filing system on July 19, 2018, but was not served on the Union until July 23, 2018. In its July 19 letter, Respondent addressed the Complaint allegations in pertinent part as follows:

1. Primestar has not received Complaints from (the Union) Local 351 as described in the Notice.
2. (a) Primestar remains a Corporation.
(b) Primestar only conducted and operated inside what would be deemed the United States Border Regions, any other dealings would not have been authorized by Primestar Construction.
(c) Primestar operated solely based on its GSA contract with the Government.
3. The Union was acting upon the CBA based on following the contract with GSA
4. The President position is based on internal operation and the contractual agreement of the federal contract.

Respondent's July 19 letter is the only response to the Complaint that CGC has received.

III. ARGUMENT

Under Section 102.20 of the Board's Rules and Regulations, a respondent must file an answer specifically admitting, denying, or explaining each of the facts alleged in the complaint

within 14 days from the service of the complaint, or any allegations not specifically denied will be deemed admitted. In this case, Respondent failed to file an answer within 14 days from service of the Complaint, and the response that Respondent filed on July 19, 2018, 21 days after service of the Complaint, failed to specifically admit, deny, or explain each allegation in the Complaint. While Respondent has numbered the paragraphs of its July 19 letter to match the paragraphs in the Complaint, the responses in those paragraphs fail to directly address the specific facts alleged in the Complaint.

Under Section 102.20 of the Board's Rules, any allegations that are not specifically denied are to be deemed admitted unless the Respondent states that they are without knowledge as to those allegations, or good cause is shown as to why those allegations should not be deemed admitted. In this case, Respondent's answer fails to address the specific allegations in paragraphs 1 through 4, and instead simply states unrelated facts or opinions which do not address whether or not the allegations raised in Complaint paragraphs 1 through 4 are true.

Respondent's failure to address the facts alleged in paragraphs 1 through 4 of the Complaint in the manner required by Section 102.20 of the Board's Rule amounts to a failure to respond to these allegations. The Board has granted default judgment in cases where respondents filed answers or letters that addressed facts or matters not raised in the complaint in lieu of responding to the specific facts raised in the complaint, on the basis that the purpose of requiring an answer that complies with Section 102.20 of the Board's Rules is to limit the scope of litigation. *See, Bbhm Mgmt. Co. d/b/a Moo & Oink, Inc. & United Food & Commercial Workers Union, Local 1546.*, 356 NLRB 1249, 1250 (2011) (holding that a pro-se litigant's letter addressing facts about arbitration matters not raised in the complaint was not a legally sufficient answer); *Eckert Fire Prot. Co.*, 329 NLRB 920, 921 (1999) (holding that a memorandum

denying all complaints was not sufficient to deny the specific allegations in a complaint and notice of hearing); *Triple H Fire Prot., Inc.*, 326 NLRB 463, 464 (1998) (holding that a pro-se respondent's letter addressing matters not raised in the complaint was not a sufficient answer to a complaint); *Am. Gem Sprinkler Co.*, 316 NLRB 102, 103 (1995) (holding that a statement that Respondent "does not agree with the Union's position" is not sufficient to answer the specific allegations in a complaint). In this matter, Respondent has numbered her paragraphs and has stated facts, but those statements do not admit or deny the allegations raised in the Complaint, and in many instances address subjects unrelated to the specific facts alleged in Complaint Paragraphs 1 through 4.

IV. CONCLUSION

In the instant case, Respondent failed to file an Answer for paragraphs 1 through 4 of the Complaint that complied with Section 102.20 of the Board's Rules. When Respondent did eventually file a letter in response to the Complaint, that response still failed to specifically admit, deny, or explain the facts alleged in the Complaint. Moreover, to date Respondent has not filed a response to the Board's Notice to Show Cause. Based on the foregoing, it is appropriate to deem the allegations contained in paragraphs 1 through 4 of the Complaint to be admitted, or in the alternative to grant partial default judgment with respect to paragraphs 1 through 4 of the Complaint and limit Respondent's ability to introduce evidence concerning these allegations of the Complaint.

For the foregoing reasons, CGC respectfully requests that the Board grant the relief sought by CGC's Motion.

Dated at Albuquerque, New Mexico, this 9th day of August 2018.

Respectfully submitted,

/s/ Katherine E. Leung

Katherine E. Leung, Counsel for the General Counsel
National Labor Relations Board
Region 28 – Albuquerque Resident Office
421 Gold Ave. SW Suite 310
Albuquerque, NM 87103
Telephone: (505)313-7226
Facsimile: (505)206-5695
E-Mail: Katherine.Leung@nlrb.gov

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I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 9, 2018, I served the above-entitled document(s) upon the following persons:

Via E-Gov & E-Filing:

Office of the Executive Secretary
National Labor Relations Board
1099 14th Street NW
Washington, D.C. 20570

Via Email:

Felicia James, President
Primestar Construction Corporation
1402 Corinth Street, Suite 251
Dallas, TX 75215-2111
E-Mail: fjames@primestarconstruction.com

Juan De La Torre, Business Representative
International Union of Operating Engineers,
Local 351
6967 Commerce Street
El Paso, TX 79915-1101
Email: juand351@yahoo.com

August 9, 2018

Date

/s/ Katherine E. Leung

Katherine E. Leung, Counsel for the
General Counsel
National Labor Relations Board
Region 28 – Albuquerque Resident Office
421 Gold Ave. SW Suite 310
Albuquerque, NM 87103
Telephone: (505)313-7226
Facsimile: (505)206-5695
E-Mail: Katherine.Leung@nrlrb.gov